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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,639	02/13/2001	Francis J. Bensur	31599/200998	2775
826	7590	07/07/2003	2	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER	MIGGINS, MICHAEL C
		ART UNIT	PAPER NUMBER	
		1772		
DATE MAILED: 07/07/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No.	Applicant(s)
	09/782,639	BENSUR, FRANCIS J.
Examiner	Art Unit	
Michael C. Miggins	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 April 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

WITHDRAWN REJECTIONS

The 35 USC 112 1st and 2nd paragraph rejections set forth in paper #4, pages 2-4, paragraphs 1-4 have been withdrawn. The 35 USC 102(b) rejection of claim 9 only set forth in paper #4, pages 4-5, paragraphs 5-6 has been withdrawn.

REJECTIONS REPEATED

The 35 USC 102(b) rejections of claims 1-8 and 10-12 are repeated for the reasons previously of record in paper #4, pages 4-5, paragraphs 5-6. Applicant has amended claims 4 and 12 so that the limitations set forth in said claims are now product limitations. Kunz et al. teach a flexible non-foil-based retort packaging further comprising ink printed on the side of the layer of polyester that faces the layer of metallized polyester (since Kunz et al. teach that the packaging material can be printed on the outside of the first film or in reverse image on the inner side, see column 2, lines 8-57 and especially column 7, lines 46-57) (applies to instant claim 4). Kunz et al. teach a flexible non-foil-based retort packaging comprising at least two opposing portions of the packaging structure having peripheral edge portions of the opposing portions heat-sealed together so as to form a pouch configuration (column 8, lines 4-68) (applies to instant claim 12).

NEW REJECTIONS***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al. (U.S. Patent No. 5,387,449) in view of Hatano et al. (U.S. Patent No. 5,527,616).

Kunz et al. teach a flexible non-foil-based retort packaging further comprising ink printed on the side of the layer of polyester that faces the layer of metallized polyester (since Kunz et al. teach that the packaging material can be printed on the outside of the first film or in reverse image on the inner side, see column 2, lines 8-57 and especially column 7, lines 46-57) as discussed above.

Kunz et al. teach applicant's invention substantially as claimed. However, Kunz et al. fail to teach a layer of a retortable lacquer covering the ink.

Hatano et al. teach a layer of a retortable lacquer covering the ink (since acryl and urethane type compositions are retortable, see column 15, lines 5-25) in a pouch for the purpose of providing improved adhesiveness and to protect the ink.

Therefore it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to have provided a layer of a retortable lacquer covering the ink in the pouch of Kunz et al. in order to provide improved adhesiveness and to protect the ink.

ANSWERS TO APPLICANT'S ARGUMENTS

Applicant's arguments with regards to the 35 USC 112 1st and 2nd paragraph rejections of record are found persuasive and thus the rejections have been withdrawn. However, applicant's arguments with regards to the 35 USC 102(b) rejections of record are not persuasive. Applicant has argued that the examiner's interpretation of the term "metallized" as including the deposition of any metal-containing compound on the polyester is wrong and that the patentability of the claims should be based on the interpretation of the term "metallized" according to the accepted meaning of the term in the art which is to mean metals and not corresponding metal oxides. In response the examiner has reviewed the Kunz reference in light of applicant's arguments. While Kunz does teach a ceramic layer which contains oxides, Kunz also teaches that the ceramic layer may also contain the corresponding metals at least in smaller concentrations (see column 4, lines 40-45). Thus the ceramic layer containing the corresponding metals apart from the oxides represents metallization of the polyester even though the metals are in smaller concentrations than the metal oxides.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1772

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is (703) 305-0915. The examiner can normally be reached on Monday-Friday; 1:30-10:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MCM *PLC*
June 28, 2003

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 6/30/03